

### **REMARKS**

This is a full and timely response to the outstanding Office action of May 19, 2005. The Examiner has required the applicants to elect to prosecute one of two groups of claims identified in the Office Action. In response to the restriction requirement, Applicants respectfully elect to prosecute the claims of Group I, corresponding to claims 1-7, 9-11, 13-19, and 21-28, with traverse, as set out hereafter.

First, in the interests of equity and fairness, Applicants should be entitled to pursue different types of claims in the present application, particularly, apparatus claims and method claims, for the invention to fully protect the invention, because there is a different body of law pertaining to each of these different types of claims. The restriction requirement is therefore unfair to the Applicants, because it will require Applicants to file and bear the additional cost and time delay associated with filing one or more divisional or continuing applications in order to cover each type of claim set.

Second, as provided in 35 U.S.C. § 121, restriction to one of two or more claimed inventions is proper only if the inventions are "independent and distinct." In its discussion of the propriety of restrictions, MPEP § 803 further provides that if search and examination of two or more inventions can be made without "serious burden," the Examiner must examine them on the merits even if the claims are directed to distinct or independent inventions.

In the present case, Groups I and II, although not necessarily obvious in view of each other, are very similar in subject matter. More specifically, each pertains to a substrate with distinct characteristics, such as a fluid handling passageway. For this reason, Applicants respectfully submit that the inventions described in these claims are not "independent" as defined in MPEP § 803 and that the restriction requirement therefore is improper as between Groups I and II. Indeed, it

appears that a search for apparatus and method would be conducted within the *same class*. In such a situation, it clearly would not be overly burdensome on the Examiner to check for both of these "separate" inventions at the same time.

For at least the foregoing reasons, Applicants respectfully traverse the restriction requirement and respectfully request the Examiner to examine the claims of Groups I and II together. Applicants expressly reserve the right to present the non-elected claims, or variants thereof, in continuing applications to be filed subsequent to the present application. Should the Examiner have any questions regarding this response, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,

  
Charles W. Griggers, Reg. No. 47,283